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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,371

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Yasushi Hatano

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

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1794

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,371	<b>Applicant(s)</b> HATANO ET AL.	
	<b>Examiner</b> WALTER B. AUGHENBAUGH	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/28/06, 01/24/08, 3/11/09</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-16 in the reply filed on August 12, 2009 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3, 5, 8 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the structural and/or compositional limitations that Applicant intends to recite by "which becomes a heat-sealing-face" cannot be ascertained. If A "becomes" B, A is not B, so this recitation does not positively recite anything about the structure or composition of the claimed product.

In regard to claim 3, the structural and/or compositional limitations that Applicant intends to recite by "is provided with" cannot be ascertained. This is true from the language of claim 3 considered alone, and also in conjunction with the language of claim 1: if the opening rim part is a "crystallized opening rim part", how would it be "provided with the amorphous portion or the lowly crystalized porton"? Furthermore, does "provided with" mean "comprises"? Or "bonded to"?

In regard to claim 5, what structure is intended to be recited by "is disposed in... an outer peripheral side of the upper surface of the opening rim part"? How is something disposed in a

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surface of something else? What structure is intended to be recited by “ranging from the center to the outer peripheral side”?

In regard to claim 8, what structure is intended to be recited by “so as to protrude toward the interior of the container”? Does this require that the resin piece actually protrudes into the interior, or in the direction of the interior, but not necessarily into the interior?

In regard to claim 11, the structural and/or compositional limitations that Applicant intends to recite by “with heat sealing strength” cannot be ascertained.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritz et al. (USPN 5,607,709).

In regard to claim 8, Fritz et al. teach a polyester container that comprises a lid and a base (Fig. 1-10). Rim 23 (Fig. 7 and 8) corresponds to the claimed “resin piece”. The portion of the container base 11 that is adjacent to the rim 23 corresponds to the claimed “opening rim part”. The portion of the lid that is “appressed against” the rim 23 and the portion of the container base 11 that is adjacent to the rim 23 corresponds to the claimed “cover member having a sealant layer”. The single layer of the lid corresponds to the sealant layer: the lid seals air from the interior of the container.

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In regard to claim 10, the structure that appears to be recited in claim 10 is taught by Fritz et al. (Fig. 8). The recitation “a resin lump... container main body” is a method limitation that has been given little patentable weight since the method of forming the article is not germane to the issue of patentability of the article itself. This recitation does not appear to require any structural limitation of the final product. The portion of the lid that is “appressed against” the rim 23 and the portion of the container base 11 that is adjacent to the rim 23 corresponds to the claimed “cover member having a sealant layer”.

In regard to claim 11, the structure that appears to be recited in claim 10 is taught by Fritz et al. (Fig. 8).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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7. Claims 1-7, 9 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritz et al. (USPN 5,607,709).

In regard to claim 1, Fritz et al. teach a polyester container that comprises a lid and a base (Fig. 1-10). The portion of the container of Fritz et al. that projects from the main portion of the container (flange 12 of the base and flange 14 of the lid, col. 2, lines 21-25 and all Figures, in particular Fig. 7) corresponds to the claimed “projecting portion”.

While Fritz et al. does not require that the base comprises crystallized polyethylene terephthalate and that the lid comprises amorphous polyethylene terephthalate, Fritz et al. disclose that suitable materials for the base are “talc-filled polypropylene, polypropylene, styrene maleic anhydride (Arco Dylark), polyphenylene oxide/polystyrene (General Electric Noryl) or crystallized polyethylene terephthalate (CPET)” (col. 3, lines 17-26). Fritz et al. disclose that suitable materials for the lid are “amorphous polyethyleneterephthalate, oriented polystyrene or styrene maleic anhydride (Arco's Dylark)” (col. 3, lines 26-28). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used crystallized polyethylene terephthalate as the material of the base, and to have used amorphous polyethylene terephthalate as the material of the lid, since these materials are disclosed by Fritz et al. as suitable materials for use as the materials of the lid and the base.

The portion of the base that comprises crystallized polyethylene terephthalate that is adjacent to the flange 12 corresponds to the claimed “crystallized opening rim part”, and the flange 14 of the lid corresponds to the claimed “amorphous portion” of the “projecting portion”.

Alternatively, the portion of the container of Fritz et al. that projects from the main portion of the container (male locking member 15 of the base and female locking member 16 of

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the lid, col. 2, lines 21-31 and all Figures, in particular Fig. 7) corresponds to the claimed “projecting portion”, and the same analysis provided above applies to this alternative interpretation.

In regard to claim 2, while Fritz et al. does not specifically teach the crystallinity of crystallized polyethylene terephthalate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected a crystallized polyethylene terephthalate having a desired degree of crystallinity in order to achieve the desired properties of the container depending upon the particular desired end results. Amorphous polyethylene terephthalate has a degree of crystallinity of 0.

In regard to claim 3, the “opening rim part” of the container taught by Fritz et al. “is provided with the amorphous portion” of the container taught by Fritz et al. because the lid mates with the base.

In regard to claim 4, while Fritz et al. does not specifically teach the thickness of the projecting portion, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the thickness of the projecting portion depending upon such factors as the desired size of the container and the desired strength of the container.

In regard to claim 5, the projecting portion is disposed at “an outer peripheral side of the upper surface of the opening rim part”. See discussion in regard to claim 1.

In regard to claim 6, the base of the container of Fritz et al. is “cup-like”, and it is crystallized. See discussion in regard to claim 1.

In regard to claim 7, the opening rim part has a flange part, and is disposed on the upper surface of the flange part. See discussion in regard to claim 1.

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In regard to claim 9, rim 23 (Fig. 7 and 8) corresponds to the claimed “resin piece”. The portion of the container base 11 that is adjacent to the rim 23 corresponds to the claimed “opening rim part”. The portion of the lid that is “appressed against” the rim 23 and the portion of the container base 11 that is adjacent to the rim 23 corresponds to the claimed “cover member having a sealant layer”. The single layer of the lid corresponds to the sealant layer: the lid seals air from the interior of the container.

In regard to claim 12, while Fritz et al. does not specifically teach that the resin piece is formed into a tapered shape, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the shape of the resin piece (rim 23) in order to achieve the desired aesthetic effect. MPEP 2144.04 I.

In regard to claim 13, while Fritz et al. does not specifically teach that “the upper surface of the opening rim part has a tapered face...” as claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the shape of the opening rim part in order to achieve the desired aesthetic effect. MPEP 2144.04 I.

In regard to claim 14, the structure that appears to be recited in claim 14 (other than the claimed shape) is taught by Fritz et al. (Fig. 7 and 8).

In regard to claims 15 and 16, while Fritz et al. does not specifically teach that the sealant layer (the lid) is made of polybutylene-terephthalate-based resin, or another resin having a melting point between 110 and 225°C, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected a material such as polybutylene-terephthalate-based resin that has a melting point that falls within a desired temperature range in order to achieve the desired degree of heat resistance, depending upon the particular desired end results.



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***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /

Examiner, Art Unit 1794

12/13/09